

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: RESEARCH SUPPORT AGREEMENT

GENERAL PROVISION TITLE	PAGE
ACCESS TO SENSITIVE INFORMATION	2
AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	3
AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS	3
AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION SUBCONTRACTS	3
ANTI-KICKBACK PROCEDURES	3
ASSIGNMENT, NOVATION AND TRANSFER	4
AUDITS AND RECORDS – NEGOTIATION	4
AUTHORITY OF JPL REPRESENTATIVES	5
AUTHORIZATION AND CONSENT	6
CHANGES – FIXED PRICE	6
DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES	6
DEFINITIONS	6
DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE	8
EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	9
EQUAL OPPORTUNITY	9
EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	9
FACSIMILE AND ELECTRONIC COPIES ACCEPTABLE	9
FINAL REPORT	9
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	10
LIMITATION ON RESTRICTIVE MARKINGS	10
NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	11
ORDER OF PRECEDENCE	11
PATENT RIGHTS - RETENTION BY THE SUBCONTRACTOR (SHORT FORM)	11
PRINCIPAL INVESTIGATOR	16
PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE	16
RELEASE OF INFORMATION	16
REQUIRED NOTICES	16
RIGHTS IN DATA – GENERAL	16
RIGHTS IN TECHNICAL PROPOSAL DATA	22
SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION	22
TECHNICAL DIRECTION	22
TERMINATION FOR CONVENIENCE – FIXED-PRICE	23
TOXIC CHEMICAL RELEASE REPORTING	24
USE OF RURAL AREA SMALL BUSINESSES	24
UTILIZATION OF SMALL BUSINESS CONCERNS	24

GENERAL PROVISIONS CANNOT BE ALTERED

The following forms (located at <http://acquisition.jpl.nasa.gov/docs.htm>) are incorporated herein by reference into this Subcontract:

- Release of Information, Form JPL 1737 (Rev. 07/08)
- Notification to Prospective Subcontractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385 (Rev. 07/91)
- Certifications, Form JPL 2892 (Rev. 10/10)

ACCESS TO SENSITIVE INFORMATION

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, REL, RSA, T&MC – 10/10] [NFS 1852.237-72 6/05]

(a) As used in this clause, "sensitive information" refers to:

- (1) Information that a contractor has developed and marked as proprietary, confidential, or with a limited or restricted rights notice, or that the Government has generated that qualifies for an exception to the Freedom of Information Act, which is not currently in the public domain, and which may embody trade secrets or commercial or financial information, and which may be sensitive or privileged;
- (2) Information that is marked JPL/Caltech Proprietary, Proposal Sensitive or Business Discreet;
- (3) Design information or guidance as may be embodied in or derived from computer-aided engineering, computer-aided design, analysis models, manufacturing models, drawings or translations of any of the foregoing, regardless of whether such information or guidance is marked or unmarked; or
- (4) Information obtained directly from JPL electronic resources, such as JPL computers, servers, networks, electronic libraries or document repositories, regardless of whether such information is marked or unmarked.

(b) If performing this subcontract entails access to sensitive information, as defined above, the Subcontractor agrees to:

- (1) Utilize any sensitive information coming into its possession only for the purposes of performing the services specified in this subcontract, and not to improve its own competitive position in another procurement nor for any other purpose.
- (2) Safeguard sensitive information coming into its possession from unauthorized use and disclosure using the same standard of care as the Subcontractor uses to protect its own confidential information, but under no circumstances less than a reasonable standard of care.
- (3) Maintain any restrictive markings on sensitive information coming into its possession and on any copies thereof.
- (4) Allow access to sensitive information only to those employees that need it to perform services under this subcontract.
- (5) Preclude access and disclosure of sensitive information to persons and entities outside of the Subcontractor's organization.
- (6) Train employees who may require access to sensitive information about their obligations to utilize it only to perform the services specified in this subcontract and to safeguard it from unauthorized use and disclosure.
- (7) Obtain a written affirmation from each employee that he/she has received and will comply with training on the authorized uses and mandatory protections of sensitive information needed in performing this subcontract.
- (8) Administer a monitoring process to ensure that employees comply with all reasonable security procedures, immediately report any breaches to the JPL Subcontracts Manager, and implement any necessary corrective actions.
- (9) Return to JPL or destroy all sensitive information, and copies thereof, no later than the effective date of the termination or expiration of this subcontract. Within thirty days of that effective date, the Subcontractor shall confirm in writing to JPL that all sensitive information received during the course of this subcontract has been returned or destroyed.

(c) The Subcontractor will comply with all procedures and obligations specified in any Organizational Conflicts of Interest Avoidance Plan incorporated into this subcontract.

(d) The nature of the work on this subcontract may subject the Subcontractor and its employees to a variety of laws and regulations relating to ethics, conflicts of interest, corruption, and other criminal or civil matters relating to the award and administration of government contracts. Recognizing that this subcontract establishes a high standard of accountability and trust, JPL will carefully review the Subcontractor's performance in relation to the mandates and restrictions found in these laws and regulations. Unauthorized uses or disclosures of sensitive information may result in termination of this subcontract for default, in addition to any other rights and remedies available by law to the Government, JPL or other provider of sensitive information.

- (e) The Subcontractor shall not be liable for the use or disclosure of sensitive information that the Subcontractor can demonstrate is: (1) in the public domain other than by a breach of this clause by the Subcontractor; (2) received by the Subcontractor from a third party without any obligation of confidentiality; (3) known to the Subcontractor without any limitation on use or disclosure prior to its receipt from JPL under this subcontract; (4) independently developed by the employees of the Subcontractor as evidenced by written documentation; or (5) generally made available to third parties by the originator of the sensitive information without restriction on disclosure.
- (f) Unless otherwise specifically provided in this subcontract, no warranty, express or implied, including without limitation any warranty of accuracy, utility, merchantability or of fitness for a particular purpose, is provided hereunder for any of the disclosed sensitive information.
- (g) The Subcontractor's obligations under this clause shall survive the expiration or termination of this Subcontract.
- (h) Notwithstanding paragraph (b)(5), the Subcontractor may submit a written request to the JPL Subcontracts Manager for authorization to disclose sensitive information to its lower-tier subcontractors. If JPL authorizes the disclosure, the Subcontractor before making any such disclosure must include the substance of this clause, suitably modified to reflect the relationship of the parties, in any lower-tier subcontract that will involve access to sensitive information. The Subcontractor shall also require an acknowledgement in any such lower-tier subcontract that: (1) the corresponding clause is being included for the benefit of JPL as a third-party beneficiary, and (2) in addition to any other rights it may have, JPL is intended to have a right of direct action against the lower-tier subcontractor, or any other person to whom that subcontractor has released or disclosed that sensitive information, to seek damages for any breach and/or to seek enforcement of that clause in the lower-tier subcontract.

AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-36 – 06/98]

(This Article applies to Subcontracts over \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] FAR 52.223-2- 12/07]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of USDA-designated items at <http://www.usda.gov/biopreferred> or 7 CFR Part 2902.)

Incorporate by reference FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION SUBCONTRACTS

[A-E, CIS, CREI, CT, FPC, FP-NR&D, FP-R&D, LH-T&M, RSA, T&MC – 10/10] [FAR 52.223-17- 05/08]

(This Article applies to Subcontracts for services or construction, unless the subcontract will not involve the use of EPA-designated items.)

Incorporate by reference FAR 52.223-17, Affirmative Procurement of EPA-Designated Items in Service and Construction Contracts.

ANTI-KICKBACK PROCEDURES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, REL –02/09] [FAR 52.203-7 – 07/95]

- (a) Definitions.
 - (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a Subcontract relating to a prime contract.
 - (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime Contractor.
 - (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a Subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier Subcontractor.
 - (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a Subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:
- (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a Subcontractor to a prime contractor or higher tier subcontractor.
- (c)
- (1) When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.
 - (2) The Subcontractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.
 - (3) The Institute may (i) offset the amount of the kickback against any monies owed by the Institute under the Subcontract and/or (ii) direct that the Subcontractor withhold from sums owed a lower-tier Subcontractor the amount of the kickback. The Institute may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to the Institute unless the Institute has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Subcontractor shall notify the Institute when the monies are withheld.
 - (4) The Subcontractor agrees to incorporate the substance of this Article, including this paragraph, in all lower-tier Subcontracts under this Subcontract which exceed \$100,000.

ASSIGNMENT, NOVATION AND TRANSFER

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A - E CIS, RSA - 09/04] [FAR 52.244-2 - 08/98]

This Subcontract may be assigned, novated, or transferred to a successor-in-interest, a successor Contractor to operate the Jet Propulsion Laboratory, or the Government.

AUDITS AND RECORDS - NEGOTIATION

[CT, FP-NR&D, FP-R&D, T&MC, FPC, CREI, A - E, LH/T&M, RSA -09/04] [FAR 52.215-2 - 06/99]

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a First-tier Subcontract hereunder.
 - (2) This paragraph (b) may not be construed to require the Subcontractor or First-tier Subcontractor to create or maintain any record that the Subcontractor or First-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (c) Availability. The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this Article, for examination, audit, or reproduction, until three years after final payment under this Subcontract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Subcontract. In addition:
 - (1) If this Subcontract is completely or partially terminated, the Subcontractor shall make available the records relating to the work terminated until three years after any resulting final termination settlement; and
 - (2) The Subcontractor shall make available records relating to appeals under the "Disputes" Article or to litigation or the settlement of claims arising under or relating to this Subcontract until such appeals, litigation, or claims are finally resolved.
- (d)
 - (1) The Subcontractor shall insert all of the provisions of this Article, including this paragraph (d), in all First-tier Subcontracts under this Subcontract that exceed \$100,000, and:
 - (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That requires the First-tier Subcontractor to furnish reports.
 - (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.

AUTHORITY OF JPL REPRESENTATIVES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

- (a) No request, notice, authorization, direction or order received by the Subcontractor and issued either pursuant to a provision of this Subcontract, to a provision of any document incorporated in this Subcontract by reference, or otherwise, shall be binding upon either the Subcontractor or the Institute unless issued or ratified in writing by the JPL Subcontracts Manager, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Subcontractor shall immediately notify, in writing, the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Subcontracts Manager, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Subcontract amount or amount allotted to this Subcontract; or (iii) otherwise be the basis for assertion of a claim by the Subcontractor under any provision of the Subcontract.

AUTHORIZATION AND CONSENT

[CT, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA –09/04] [FAR 52.227-1 – 07/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Subcontractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all First-tier Subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any First-tier Subcontract, under or over \$100,000, does not affect this authorization and consent.

CHANGES – FIXED PRICE

[FP-NR&D, FP-R&D, RSA –09/04] [FAR 52.243-1, Alt V – 08/87, FAR 52.243-6 – 04/84]

All changes will be bilaterally negotiated and implemented by a written Subcontract Supplemental Agreement.

DATA REMOVAL FROM COMPUTERS AND ELECTRONIC DEVICES

[CT, FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC, FPC, CREI, A-E, RSA – 02/09] [NPR 2810.1A – 05/06]

The Subcontractor shall archive all data required to be retained pursuant to the terms of this Subcontract (including, but not limited to, the General Provisions, Additional General Provisions, Alterations to General Provisions and Special Provisions). The Subcontractor shall completely sanitize (e.g., overwrite, degauss or destroy) all media containing data in all computers and other electronic devices and permanently delete all non-transferable licensed software before such computers or other electronic devices leave the control of the Subcontractor by transfer or disposal. All data, including computer software, provided by JPL, derived from JPL data, or owned by the Government or JPL pursuant to this Subcontract shall be permanently deleted from Subcontractor controlled computers or electronic devices before leaving the control of the Subcontractor. The Subcontractor shall submit to JPL a written certification that the above sanitization requirements have been satisfied and the date of such action.

DEFINITIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA –02/09] [FAR 52.202-1 – 12/01]

As used throughout this Subcontract, the following terms shall have the meanings set forth below:

- (a) The term “Administrator” means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term “Agreement” is synonymous with the term “Subcontract.”
- (c) The term “basic research” means research that is directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.
- (d) The term “commercial component” means any component that is a commercial item.
- (e) The term “commercial item” means (see related term “nondevelopmental item,” below):
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (e)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (e)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or

- (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (e)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if:
 - (A) Such services are procured for support of an item referred to in paragraph (e)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (B) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services:
 - (A) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (B) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in subparagraphs (e)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (f) The term "component" means any item supplied as part of an end item or of another component – except that for use in 52.225-9 and 52.225-11, see the definitions in 52.225-9(a) and 52.225-11(a).
- (g) Any reference to the "Contract Disputes Act" is meant to refer to the Disputes provision in this Subcontract, if any.
- (h) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (i) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Subcontract, unless otherwise indicated.
- (j) The term "First-tier Subcontract," as used in this Subcontract, includes, but is not limited to, purchase orders under this Subcontract.
- (k) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (l) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (m) The term "Institute" means the California Institute of Technology as a party to this Subcontract.

- (n) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. The rights of JPL under this Subcontract are the rights of the California Institute of Technology as a party to this Subcontract.
- (o) The term "JPL Subcontracts Manager" means the individual authorized to issue and administer this Subcontract for JPL.
- (p) The term "NASA" means the National Aeronautics and Space Administration.
- (q) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Subcontract, unless otherwise indicated.
- (r) The term "nondevelopmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (r)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (r)(1) or (2) solely because the item is not yet in use.
- (s) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (t) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government).
- (u) The term "Schedule" means the statements in the order/Subcontract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (v) The term "Subcontract amount" means the Subcontract price, the estimated cost and fee, if any, or the ceiling price of the Subcontract.
- (w) The term "Subcontractor" means the selling party to this Subcontract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Subcontractor" is the First-tier Subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (x) The terms "United States" or "U.S." mean the United States of America.

DESIGNATION OF NEW TECHNOLOGY REPRESENTATIVE AND PATENT REPRESENTATIVE

[CT, FP – NR&D, FP – R&D, LH/T&M, T&M, FPC, A – E, CREI, RSA – 10/10] [NFS 1852. 227-72 – 06/97]

- (a) For purposes of administration of the clause of this Subcontract entitled "New Technology" or "Patent Rights--Retention by the Subcontractor (Short Form)," whichever is included, the following named representatives are hereby designated to administer such clause:

Title	Office Code	Address (including zip code)
New Technology Representative	S/J 180-801	NASA Management Office at JPL 4800 Oak Grove Drive Pasadena, CA 91109
Patent Representative	S/J 180-802	NASA Management Office at JPL 4800 Oak Grove Drive Pasadena, CA 911099

- (b) Reports of reportable items, and disclosure of subject inventions, interim reports, final reports, utilization reports, and other reports required by the clause, as well as any correspondence with respect to such matters, should be directed to the New Technology Representative unless transmitted in response to correspondence or request from the Patent Representative. Inquires or requests regarding disposition of rights, election of rights, or related matters should be directed to the Patent Representative. This clause shall be included in any Lower-tier Subcontract hereunder requiring a "New Technology" clause or "Patent Rights--Retention by the Contractor (Short Form)" clause, unless otherwise authorized or directed by the Contracting Officer. The respective responsibilities and authorities of the above-named representatives are set forth in 1827.305-370 of the NASA FAR Supplement.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA, CIS –09/04] [FAR 52.222-37 – 12/01]

(This Article is applicable to this Subcontract (and any First-tier Subcontract) when the Article at 52.22-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans is applicable.)
Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era, and Other Eligible Veterans.

EQUAL OPPORTUNITY

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA –09/04] [FAR 52.222-26 – 04/02]

(The following Article is applicable unless this Subcontract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Subcontract], the Subcontractor has been or is awarded nonexempt Federal Subcontracts and/or First-tier Subcontracts that have an aggregate value in excess of \$10,000, the Subcontractor shall comply with FAR 52.222-26 during performing this Subcontract. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.222-35 - 12/01]

(This Article applies to Subcontracts of \$25,000 or more, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

FACSIMILE AND ELECTRONIC COPIES ACCEPTABLE

[CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 10/10]

The parties agree that facsimile (fax) and electronic copies of image file formats in .PDF, .TIFF, .JPG, .BMP, and .GIF of subcontract documents electronically submitted are just as binding as originally executed documents.

FINAL REPORT

[CT, FP-NR&D, FP-R&D, LH/T&M, CREI, RSA – 09/04] [NPG 2200.2A]

(This Article applies to Subcontracts requiring final, formal, published reports prepared for NASA funded or sponsored science technology, research and development, and space flight projects).

The Subcontractor's final published report shall (1) indicate that the work is funded by NASA, (2) be formatted in accordance with NPG 2200.2A, (3) be correctly marked to ensure appropriate dissemination, and (4) be forwarded to JPL.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.203-12 – 06/97]

(This Article applies if this Subcontract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

LIMITATION ON RESTRICTIVE MARKINGS

[CREI, CT, FP-NR&D, FP-R&D, LH/T&M, RSA, T&MC- 10/10]

- (a) Information delivered or otherwise provided by the Subcontractor to JPL in connection with this Subcontract shall not contain any Restrictive Markings, except as permitted by section (b) below or as required by law. As used in this Article, "Restrictive Markings" means any marking, legend or other indicia intended to limit use of the information. For example, "Restrictive Markings" may include, but are not limited to, "Proprietary," "Confidential," or substantially equivalent designation, as well as the Limited and Restricted Rights Notices that may be set forth in the "Rights in Data – General" Article of this Subcontract. Restrictive Markings not permitted by section (b) below impose no obligations or restrictions on JPL's use and disclosure of information, and, unless otherwise agreed in writing, JPL is entitled to disregard and/or remove such unpermitted Restrictive Markings on information in its possession at any time without notice to the Subcontractor.
- (b) The following Restrictive Markings shall be permitted under this Subcontract:
 - (1) The Limited Rights Notice permitted under paragraph (g)(2) of the "Rights In Data – General" Article, if included in this Subcontract.
 - (2) The Restricted Rights Notice permitted under paragraph (g)(3) of the "Rights in Data – General" Article, if included in this Subcontract.
 - (3) "Proprietary," "Confidential," or substantially equivalent designations may be included on Subcontractor's financial, administrative, cost, pricing or management information relating to the administration of this Subcontract. Any such Restrictive Markings must specifically identify the type of financial or administrative information, for example, "[SUBCONTRACTOR NAME] Proprietary Cost Information."
 - (4) Copyright notices to the extent permitted by paragraph (c) of the "Rights In Data – General" Article in this Subcontract.
 - (5) [RESERVED]
- (c) JPL retains the right to challenge any Restrictive Markings identified in section (b) above. Challenges to such markings shall be made in accordance with the procedures set forth in paragraph (e) of the "Rights in Data – General" Article in this Subcontract.
- (d) Where information contains both unrestricted and restricted data subject to the Restrictive Markings permitted in section (b) above, the Subcontractor shall mark only those pages, parts or portions of the information that are subject to restrictions permitted in section (b).
- (e) Upon the execution of this Subcontract, all prior confidentiality agreements between JPL and the Subcontractor relating to or otherwise encompassing the subject matter of this Subcontract are hereby terminated. The obligation to maintain confidentiality of any information disclosed pursuant to such agreements shall survive termination and continue for the nondisclosure period set forth therein or, if none is specified, for the term of this Subcontract. Notwithstanding the foregoing, should use of information previously delivered by Subcontractor to JPL under a confidentiality agreement be deemed necessary for the performance of this subcontract, the Subcontractor must identify in writing to JPL which Restrictive Markings permitted in section (b)(1)-(4) above apply, if any, within thirty (30) days of the execution of this Subcontract.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.227-2 – 08/96]

(The provisions of this Article shall be applicable only if the amount of this Subcontract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Subcontractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Subcontract of which the Subcontractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Subcontract or out of the use of any supplies furnished or work or services performed under this Subcontract, the Subcontractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subcontractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subcontractor has agreed to indemnify the Government.
- (c) The Subcontractor agrees to include, and require inclusion of; this Article in all First-tier Subcontracts at any tier for supplies or services (including construction and architect-engineer First-tier Subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

ORDER OF PRECEDENCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Subcontract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) The Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise, in the Schedule or the General Provisions, and
 - (2) Any proposals, specifications or other documents or provisions which are made a part of this Subcontract by reference or otherwise in the Schedule or the General Provisions,
 - (3) (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Subcontract that are required by their terms to be included in First-tier Subcontracts shall be required by the Subcontractor to take precedence in the First-tier Subcontract over any other provisions.

PATENT RIGHTS - RETENTION BY THE SUBCONTRACTOR (SHORT FORM)

[CREI, RSA –09/04] [FAR 52.227-11- 06/97; NFS 1852.227-11- 06/97]

- (a) Definitions.
 - (1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).
 - (2) "Made" when used in relation to any invention, means the conception or first actual reduction to practice of such invention.
 - (3) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt

from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

- (4) "Practical Application" means to manufacture in the case of a composition of product, to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
 - (5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this Article, the size standard for small business concerns involved in Government procurement and First-tier Subcontracting, at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
 - (6) "Subject Invention" means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under this Subcontract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Subcontract performance.
 - (7) "Contracting Officer" has the meaning set forth under the "Definitions" Article. The Contracting Officer has designated the Patent Counsel and the Technology Utilization Officer, NASA Management Office, 4800 Oak Grove Drive, Pasadena, California 91109, as the representatives for the administration of the "Patent Rights" Article of this Subcontract. All correspondence pertaining thereto shall be addressed to the Technology Utilization Officer unless transmitted in response to correspondence from the Patent Counsel. See (f) (5) (A) and (B) below regarding the requirement to send copies of transmittal letters to the JPL Office of Patents and New Technology and to the cognizant JPL Subcontracts Manager.
- (b) Allocation of Principal Rights. The Subcontractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Article and 35 U.S.C. 203. With respect to any subject invention in which the Subcontractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- (c) Invention Disclosure, Election of Title and Filing of Patent Application by Subcontractor.
- (1) The Subcontractor will disclose each subject invention to the Contracting Officer within two months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the Subcontract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Subcontractor will promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.
 - (2) The Subcontractor will elect in writing whether or not to retain title to any such invention by notifying NASA within two years of disclosure to NASA. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Contracting Officer to a date that is no more than 60 days prior to the end of the statutory period.
 - (3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Subcontractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
 - (4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c)(1), (2), and (3) of this Article, may, at the discretion of the Contracting Officer, be granted.

- (5) The Subcontractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the Subcontractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention, and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site <http://invention.nasa.gov>.
- (d) Conditions When the Government May Obtain Title. The Subcontractor will convey to NASA, upon written request, title to any subject invention:
 - (1) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) above, or elects not to retain title; provided that NASA may only request title within 60 days after learning of the Subcontractor's failure to disclose or elect within the specified times;
 - (2) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) of this Article; provided, however, that if the Subcontractor has filed a patent application in a country after the time specified in paragraph (c) of this Article but prior to its receipt of the written request of the Contracting Officer, the Subcontractor shall continue to retain title in that country;
 - (3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in re-examination or opposition proceeding on, a patent on a subject invention.
- (e) Minimum Rights to Subcontractor and Protection of the Subcontractor Right to File.
 - (1) The Subcontractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Subcontractor fails to disclose the invention within the times specified in paragraph (c) of this Article. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a party and includes the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so at the time the Subcontract was awarded. The license is transferable only with the approval of NASA except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.
 - (2) The Subcontractor's domestic license may be revoked or modified by NASA (the funding Federal agency) to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and NASA licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA (the funding Federal agency) to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
 - (3) Before revocation or modification of the license, NASA (the funding Federal agency) will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed 30 days (or such other time as may be authorized by NASA for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and NASA regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.
- (f) Subcontractor Action to Protect the Government's Interest.
 - (1) The Subcontractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:
 - (A) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title; and
 - (B) Convey title to NASA when requested under paragraph (d) of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

- (2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under Subcontract in order that the Subcontractor can comply with the disclosure provisions of paragraph (c) of this Article, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this Article. The Subcontractor shall instruct such employees, through employee agreements or suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- (3) The Subcontractor will notify the Contracting Officer of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a re-examination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
- (4) The Subcontractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under a Prime Contract between the Institute and NASA and JPL Subcontract no. [Note: Insert number of this JPL Subcontract] The Government has certain rights in the invention."
- (5) The Subcontractor shall provide the Contracting Officer (A) through (D) below. Copies of transmittal letters for (A) and (B) below shall be sent to the JPL Office of Patents and New Technology (OPANT) and to the cognizant JPL Subcontracts Manager.
 - (A) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the Subcontract, of all subject inventions required to be disclosed during the period.
 - (B) A final report prior to closeout of the Subcontract listing all subject inventions or certifying that there were none.
 - (C) Upon request, the filing date, serial number, and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the Subcontractor has applied for patents.
 - (D) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a co-inventor.

(g) First-tier Subcontracts.

- (1) The Subcontractor will include this Article, suitably modified to identify the parties, in all First-tier Subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The First-tier Subcontractor will retain all rights provided for the Subcontractor in this Article, and the Subcontractor will not, as part of the consideration for awarding the First-tier Subcontract, obtain rights in the First-tier Subcontractor's subject inventions.
 - (2) The Subcontractor shall include the clause in the NASA FAR Supplement at 18-52.227-70, New Technology, suitably modified to identify the parties, in all First-tier Subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.
 - (3) In the case of subcontracts, at any tier, NASA, the First-tier Subcontractor, and the Subcontractor agree that the mutual obligations of the parties created by this Article constitute a Subcontract between the First-tier Subcontractor and NASA with respect to the matters covered by this Article; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Subcontract Disputes Act in connection with proceedings under paragraph (j) of this Article.
- (h) Reporting on Utilization of Subject Inventions. The Subcontractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information as NASA may reasonably specify. The Subcontractor also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding

undertaken by NASA in accordance with paragraph (j) of this Article. As required by 35 U.S.C. 202(c)(5), NASA agrees it will not disclose such information to persons outside of the Institute and the Government without permission of the Subcontractor.

- (i) Preference for United States Industry. Notwithstanding any other provision of this Article, the Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.
- (j) March-in Rights. The Subcontractor agrees that, with respect to any subject invention in which it has acquired title, NASA has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of NASA to require the Subcontractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:
 - (1) Such action is necessary because the Subcontractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
 - (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Subcontractor, assignee, or their licensees;
 - (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or
 - (4) Such action is necessary because the agreement required by paragraph (i) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- (k) Special Provisions for Subcontracts with Nonprofit Organizations. If the Subcontractor is a nonprofit organization, it agrees that:
 - (1) Rights to a subject invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Subcontractor;
 - (2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when NASA deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
 - (3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
 - (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Subcontractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Subcontractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

- (l) Communications. The NASA central point of contact for communications or matters relating to this Article is the Contracting Officer.

PRINCIPAL INVESTIGATOR

[RSA – 09/04]

The Principal Investigator, specified in this Subcontract is considered essential to the work being performed. Prior to removing, replacing, or diverting the Principal Investigator, the Subcontractor shall notify JPL reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on this Subcontract. No diversion shall be made by the Subcontractor without the written consent of JPL; provided, that JPL may ratify in writing the change, and such ratification shall constitute the consent of JPL required by this Article.

PROHIBITION OF SUBCONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN SUBCONTRACT PERFORMANCE

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

The Subcontractor, its employees, agents and First-tier Subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Subcontract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Subcontractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence. The Subcontractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Subcontractor shall include this provision in any First-tier Subcontract involving travel subject to JPL approval or requiring that the First-tier Subcontractor utilize a privately owned (noncommercial) aircraft.

RELEASE OF INFORMATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA –02/09]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Subcontractor agrees that all information released by the Subcontractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Subcontractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See form JPL 1737, "Release of Information.")
- (b) The Subcontractor agrees to insert this clause including this paragraph in all First-tier Subcontracts.

REQUIRED NOTICES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04]

Unless otherwise specified in this Subcontract, any notice which the Subcontractor is required to provide to JPL under any provision of this Subcontract shall be directed to the JPL Subcontracts Manager or the Manager, Acquisition Division, JPL, or their authorized representatives.

RIGHTS IN DATA – GENERAL

[CREI, RSA – 02/09] [FAR 52.227-14 – 06/87; NFS 1852.227-14 – 06/87]

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Subcontract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

- (a) Definitions.
- (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include information incidental to Subcontract administration, such as financial, administrative, cost, or pricing, or management information.

- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (4) "Institute" means the California Institute of Technology as a party to this Subcontract.
 - (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Subcontract. JPL's rights under this Subcontract are rights of the California Institute of Technology as a party to this Subcontract.
 - (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
 - (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
 - (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
 - (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and in furtherance of its Government contract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Subcontract, including minor modifications of such computer software.
 - (10) "Technical data," as used in this Article, means data (other than computer software) that are of a scientific or technical nature.
 - (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (b) Allocation of Rights.
- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:
 - (A) Data first produced in the performance of this Subcontract;
 - (B) Form, fit, and function data delivered under this Subcontract;
 - (C) Data delivered under this Subcontract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Subcontract; and
 - (D) All other data delivered under this Subcontract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
 - (2) The Subcontractor shall have the right to:
 - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Subcontractor in the performance of this Subcontract, unless provided otherwise in paragraph (d) of this Article;
 - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;

- (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
- (D) Establish claim to copyright subsisting in data first produced in the performance of this Subcontract to the extent provided in subparagraph (c)(1) of this Article.

(c) Copyright.

(1) Data First Produced in the Performance of This Subcontract.

- (A) Except as otherwise specifically provided in the Subcontract, the Subcontractor may establish claim to copyright subsisting in any data first produced in the performance of this Subcontract.
- (B) When claim to copyright is made, the Subcontractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Subcontract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime Contract between the California Institute of Technology and NASA.")
- (C) For data other than computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
- (D) For computer software, the Subcontractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) Data Not First Produced in the Performance of This Subcontract. The Subcontractor shall not, without prior written permission of JPL, incorporate in data delivered under this Subcontract any data not first produced in the performance of this Subcontract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Subcontractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Subcontractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.

(3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data.

- (1) The Subcontractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the Subcontractor in the performance of this Subcontract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Subcontract.
- (2) The Subcontractor agrees that to the extent it receives or is given access to data necessary for the performance of this Subcontract that contain restrictive markings, the Subcontractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.
- (3)
 - (A) Before the Subcontractor publishes or releases computer software first produced under this Subcontract, it shall first furnish the Contracting Officer with a copy of such software and a statement as to the circumstances of the publication or release.

- (B) If the Government desires to obtain copyright in computer software first produced in the performance of this Subcontract for which claim to copyright has not been made by the Subcontractor of this Article, the Contracting Officer or the Institute may direct the Subcontractor to establish, or authorize the establishment of, claim to copyright in said computer software and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.
- (C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."

(e) Unauthorized Marking of Data.

- (1) Notwithstanding any other provisions of this Subcontract concerning inspection or acceptance, if any data delivered under this Subcontract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Subcontract, JPL may at any time either return the data to the Subcontractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:
 - (A) JPL shall make written inquiry to the Subcontractor affording the Subcontractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
 - (B) If the Subcontractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
 - (C) If the Subcontractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Subcontractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Subcontractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Subcontractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request there under.
- (3) This paragraph (e) does not apply if this Subcontract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) (Reserved)

(f) Omitted or Incorrect Markings.

- (1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the Subcontractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to

have notices placed on qualifying data at the Subcontractor's expense, and JPL may agree to do so if the Subcontractor:

- (A) Identifies the data to which the omitted notice is to be applied;
- (B) Demonstrates that the omission of the notice was inadvertent;
- (C) Establishes that the use of the proposed notice is authorized; and
- (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) JPL may also:

- (A) Permit correction at the Subcontractor's expense of incorrect notices if the Subcontractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

- (1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Subcontract and qualify as either limited rights data or restricted computer software, if the Subcontractor desires to continue protection of such data, the Subcontractor shall withhold such data and not furnish them to JPL under this Subcontract. As a condition to this withholding, the Subcontractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer database for delivery to JPL are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Subcontractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under JPL Subcontract No. _____. These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the Subcontractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:
 - (1) Use by support service Subcontractors.
 - (2) (Reserved)
 - (b) This Notice shall be marked on any reproduction of these data, in whole or in part.
- (End of notice)

(3)

- (A) Notwithstanding paragraph (g)(1) of this Article, the Subcontract may identify and specify the delivery of restricted computer software, or JPL or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Subcontractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the

Government will thereafter treat the computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under JPL Subcontract No. _____. It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the Subcontract.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
 - (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
 - (5) Disclosed to and reproduced for use by support service Subcontractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
 - (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the Subcontract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

- (B) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in JPL Subcontract No. _____ with [name of Lower-tier Subcontractor].

(End of notice)

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (h) Subcontracting. The Subcontractor has the responsibility to obtain from its Lower-tier Subcontractors all data and rights therein necessary to fulfill the Subcontractor's obligations to the Government and the Institute under this Subcontract. If a Lower-tier Subcontractor refuses to accept terms affording the Government or the Institute such rights, the Subcontractor shall promptly bring such refusal to the attention of JPL and not proceed that Lower-tier Subcontract award without further authorization.
- (i) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.

- (j) Inspection of Data Withheld. The Subcontractor agrees, except as may be otherwise specified in this Subcontract for specific data items listed as not subject to this paragraph, that the Contracting Officer, or an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this Subcontract, inspect at the Subcontractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Subcontractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Subcontractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

RIGHTS IN TECHNICAL PROPOSAL DATA

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI, A – E, RSA – 09/04] [FAR 52.227-23 – 06/87]

(This Article applies to Subcontracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Subcontract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Subcontract and any future modifications are based.

SUBCONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA –09/04] [FAR 52.222-4 – 09/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to Subcontracts for supplies, materials, or articles ordinarily available in the open market, Subcontracts for transportation by land, air, or water, or for the transmission of intelligence, Subcontracts of \$100,000 or less, Subcontracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, America Samoa, Guam, Wake Island, and Johnson Island, and Subcontracts (or portions of Subcontracts) for supplies in connection with which any required services are merely incidental to the Subcontract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), Subcontracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Acts, and Subcontracts for commercial items.
- (b) FAR clause 52.222-4 (July 1995) is hereby incorporated by reference in total, except that:
- (1) The words "JPL Subcontracts Manager or JPL's Contracting Officer" shall be substituted for the words "Contracting Officer" wherever they appear;
 - (2) The word "Subcontractor" shall be substituted for the words "Prime Contractor" wherever they appear; and
 - (3) The words "with JPL" shall be substituted for the words "Federal Subcontract with the same Prime Contractor" wherever they appear.

TECHNICAL DIRECTION

[FP-NR&D, LH/T&M, T&MC, FPC, A - E, FP-R&D, RSA – 09/04] [NFS 1852.242-70 – 09/93]

- (a) Performance of the work under this Subcontract is subject to the written technical direction of the Contract Technical Manager (CTM). "Technical direction" means a directive to the Subcontractor that approves approaches, solutions, designs, or refinements; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or furnishes similar instruction to the Subcontractor. Technical direction includes requiring studies and pursuit of certain lines of inquiry regarding matters within the general tasks and requirements of this Subcontract.
- (b) The CTM does not have the authority to, and shall not, issue any instruction purporting to be technical direction that:
- (1) Constitutes an assignment of additional work outside the statement of work;
 - (2) Constitutes a change as defined in the changes clause;

- (3) Constitutes a basis for any increase or decrease in the total estimated Subcontract cost, the fixed fee (if any), or the time required for Subcontract performance;
 - (4) Changes any of the expressed terms, conditions, or specifications of the Subcontract; or
 - (5) Interferes with the Subcontractor's rights to perform the terms and conditions of the Subcontract.
- (c) All technical direction shall be issued in writing by the CTM.
- (d) The Subcontractor shall proceed promptly with the performance of technical direction duly issued by the CTM in the manner prescribed by this clause and within the CTM's authority. If, in the Subcontractor's opinion, any instruction or direction by the CTM falls within any of the categories defined in paragraph (b) of this clause, the Subcontractor shall not proceed but shall notify the JPL Subcontracts Manager in writing within 5 working days after receiving it and shall request the Subcontracts Manager to take action as described in this clause. Upon receiving this notification, the Subcontracts Manager shall either issue an appropriate Subcontract modification within a reasonable time or advise the Subcontractor in writing within 30 days that the instruction or direction is:
- (1) Rescinded in its entirety; or
 - (2) Within the requirements of the Subcontract and does not constitute a change under the changes clause of the Subcontract, and that the Subcontractor should proceed promptly with its performance.
- (e) Any action(s) taken by the Subcontractor in response to any direction given by any person other than the Subcontracts Manager or the CTM shall be at the Subcontractor's risk.

TERMINATION FOR CONVENIENCE – FIXED-PRICE

[FP-R&D, RSA – 09/04] [FAR 52.249-2 – 09/96]

- (a) JPL may terminate performance of work under this Subcontract in whole or, from time to time, in part if JPL determines that a termination is in the interest of the Institute or the Government. JPL shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by JPL, the Subcontractor shall immediately proceed with the following obligations:
 - (1) Stop work as specified in the notice.
 - (2) Place no further First-tier Subcontracts or orders (referred to as First-tier Subcontracts in this Article) for materials, services, or facilities, except as necessary to complete the continued portion of the Subcontract.
 - (3) Terminate all applicable First-tier Subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
 - (4) Assign to JPL, as directed by JPL, all right, title, and interest of the Subcontractor under the First-tier Subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of First-tier Subcontracts; the approval or ratification will be final for purposes of this Article.
 - (6) Transfer title (if not already transferred) as directed by JPL, deliver to JPL any information and items that, if the Subcontract had been completed, would have been required to be furnished, including (i) materials or equipment produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings and information.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Subcontract that is in the possession of the Subcontractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by JPL, termination inventory other than that retained by JPL under subparagraph (6) above; provided, however, that the Subcontractor (i) is not required to extend

credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Subcontract, credited to the price or cost of the work, or paid in any other manner directed by JPL.

- (c) The Subcontractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Subcontractor within this 120-day period.
- (d) After termination, the Subcontractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Subcontractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Subcontractor within this six-month period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Subcontractor and JPL may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel; provided that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The Subcontract shall be amended and the Subcontractor paid the agreed amount.
- (f) The cost principles and procedures in subpart 31.3 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, shall govern all costs claimed, agreed to, or determined under this article; however, if the Subcontractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," those cost principles in effect on the date of this Subcontract shall apply; provided, that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Subcontract, for commercial organizations shall apply to such Subcontractor.
- (g) The Institute may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Subcontractor for the terminated portion of this Subcontract, if the Institute believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

TOXIC CHEMICAL RELEASE REPORTING

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.223-14 – 10/00]

(This Article is applicable to all Subcontracts where the value of the Subcontract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Subcontract, the Subcontractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

USE OF RURAL AREA SMALL BUSINESSES

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [NFS 1852.219-74 – 09/90]

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL BUSINESS CONCERNS

[CT, CIS, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A – E, RSA – 09/04] [FAR 52.219-8 – 10/00]

(This Article is applicable when the Subcontract amount is expected to be over \$100,000, unless (i) a personal services Subcontract is contemplated, (ii) a commercial items or services Subcontract, or (iii) the Subcontract together with all its First-tier Subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small Business Concerns.

